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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,314	10/31/2003	Bruce M. Horton	NYMX0001	3935
25235 7590 06/11/2008 HOGAN & HARTSON LLP ONE TABOR CENTER, SUITE 1500 1200 SEVENTEENTH ST DENVER, CO 80202			EXAMINER SHUMATE, PAUL W	
			ART UNIT 3693	PAPER NUMBER
			MAIL DATE 06/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/699,314

**Applicant(s)**

HORTON ET AL.

**Examiner**

PAUL SHUMATE

**Art Unit**

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in reply to the response filed on 3/20/2008. Claims 1-18 are currently pending, have been examined, and stand rejected. Claims 1 and 12 have been amended by Applicant. Claims 19-25 have been cancelled by Applicant.

### ***Claim Rejections - 35 USC § 101***

2. Previously stated rejection is mute due to Applicant's cancellation of relative claims.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim(s) 1-4, and 7-14 rejected under 35 U.S.C. 103(a) as being unpatentable over by Lange, U.S. Patent Application Publication No.: 2002/0099640, in view of Vacante et al., U.S. Patent Application Publication No.: 2004/0176990.

As per claims 1 and 12, Lange teaches executing simultaneously a group of futures with different expiration dates, commonly termed a strip (see at least paragraph 0709) for a single price (see at least paragraphs 0908 and 0923). The defined size of the strip transaction is the sum of the sizes of each futures contract making up the strip. The specified delivery location is defined by the specific delivery locations of each futures contract making up the strip. The plurality of defined settlement dates are the different expiration dates of the contracts making up the strip. The specified time period of the settlement dates is the range covered from the first expiration date to the last expiration date of the futures contracts

making up the strip. Upon expiration of at least one of the futures contracts making up the strip, that contract must be settled, either through cash settlement or through physical delivery of the underlying commodity. Therefore every time a futures contract in the strip expires, and is then settled, a part of the traded strip is now settled. Other futures contracts that have not expired still represent an open position and represent the portion of the unsettled strip. Although the examiner believes the teachings of Lange do teach or at least strongly suggest that Lange's digital strip is arguably equivalent to Applicant's "Eroding Futures Contract," the examiner does acknowledge that Lange does not specifically state, word for word, that the digital strip involves a single futures contract.

However, Vacante teaches a method and system for trading futures contracts where "the future may also specify other standard and non-standard contract terms [and] the future may provide for multiple purchases, each purchase with its own expiration date and time (see at least the last 5 lines of paragraph 0015)." Further, Vacante teaches that "the future may have the ability to be exercised in part or piecemeal [and] the unexercised portion may be re-sold to third parties or retained (see at least paragraph 0021). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to incorporate the teachings of Vacante into the teachings of Lange to include trading a single futures contract with multiple delivery events to occur over a schedule period of time because this enables purchasers to better mitigate risk using non-standard or non-traditional contract terms (see at least paragraphs 0005 and 0015).

As per claims 2, 3, 13, and 14, Vacante further teaches trading any un-exercised portions of a futures contract before a final settlement or expiration date and clearing a finally settled portion of the futures contract after a defined settlement event (see at least paragraphs 0015, 0017, and 0021).

As per claim 4, Lange further discloses generating reports reflecting activity related to the trading and settlement of exchange trades (see at least paragraphs 0098, 0194, and 0761).

As per claim 7, Lange discloses a single trade comprising multiple futures contracts with different expiration dates as shown above. He further discloses reducing an open position value of the contract by an amount equal to a quantity of the contract that was finally settled because this is exactly what happens when any one of the futures contracts in the strip expires, and is therefore settled, while other futures

contracts still exist in the strip that have not yet expired. Vacante teaches the limitations of claim 7 in at least paragraphs 0015 and 0021.

As per claim 8, see the rejections for claims 1 and 7 as shown above, referencing Lange paragraph 0709 as well.

As per claim 9, Lange further teaches in paragraph 0709 each final settlement event, which is represented by each different futures contract's settlement, occurs at a contract-specified settlement time, which is represented by each contracts individual expiration date.

As per claims 10 and 11, Vacante further teaches the traded futures contract as a fixed quantity contract and also as a variable quantity contract (see at least paragraphs 0015, 0017, and 0021).

5. Claim(s) 5, 6, and 15-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Lange in view of Vacante et al. further in view of Official Notice.

As per claims 5, 6, 15, and 16, the examiner takes Official Notice that strips of futures contracts are commonly traded to mitigate risk in a market with volatile prices and therefore the range of expiration dates defined in a strip of futures contracts are related to the volatility patterns of the market in which they futures contracts are traded. Depending on the market, this range may be days, months, and even years. It would be obvious for the range of expiration dates defined in a traded strip of futures contracts to be span days, weeks, months, or years depending on the market in which the strip of futures contracts is traded.

As per claims 17 and 18, the examiner takes Official Notice that it is old and well known in the art that settling and clearing a futures contract obligation is commonly done through cash payment or physical delivery of the underlying commodity.

6. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Brady et al., U.S. Patent Publication No.: 2002/0128955, specifically see paragraph 0054.

### **Response to Arguments**

7. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Shumate whose telephone number is 571-270-1830. The examiner can normally be reached on M-F 8:30 AM - 6:00 PM, EST alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

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at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/

Supervisory Patent Examiner, Art Unit 3693

Name: Paul W. Shumate

Title: Patent Examiner

Date: 6/9/08

Signature: /Paul Shumate/  
Examiner, Art Unit 3693